



[6450-01-P]

DEPARTMENT OF ENERGY

5 CFR Chapter XXIII

10 CFR Chapters II, III, and X

Reducing Regulatory Burden

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: As part of its implementation of Executive Order 13563, “Improving Regulation and Regulatory Review,” issued by the President on January 18, 2011, the Department of Energy (Department or DOE) is seeking comments and information from interested parties to assist DOE in reviewing its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. The purpose of DOE’s review is to make the agency’s regulatory program more effective and less burdensome in achieving its regulatory objectives. In this request for information, DOE also highlights its most recent regulatory review and reform efforts conducted to date in light of comments from interested parties.

DATES: Written comments and information are requested on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are encouraged to submit comments, identified by “Regulatory Burden RFI,” by any of the following methods:

White House website: <http://www.whitehouse.gov/engage>

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: Regulatory.Review@hq.doe.gov. Include “Regulatory Burden RFI” in the subject line of the message.

Mail: U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue, SW., Room 6A245, Washington, DC 20585.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>.

The Department’s plan for retrospective review of its regulations and its subsequent update reports can be accessed at <http://energy.gov/gc/services/open-government/restrospective-regulatory-review>.

FOR FURTHER INFORMATION CONTACT: Matthew Zogby, Office of the Assistant General Counsel for Legislation, Regulation, and Energy Efficiency, U.S. Department of Energy,

Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585. E-mail: *Regulatory.Review@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On January 18, 2011, the President issued Executive Order 13563, “Improving Regulation and Regulatory Review,” to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. To that end, the Executive order requires, among other things, that:

- Agencies propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; and that agencies tailor regulations to impose the least burden on society, consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; and that, consistent with applicable law, agencies select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).
- The regulatory process encourages public participation and an open exchange of views, with an opportunity for the public to comment.
- Agencies coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.

- Agencies consider low-cost approaches that reduce burdens and maintain flexibility.
- Regulations be guided by objective scientific evidence.

Additionally, the Executive Order directs agencies to consider how best to promote retrospective analyses of existing rules. Specifically, agencies were required to develop a plan under which the agency will periodically review existing regulations to determine which should be maintained, modified, strengthened, or repealed to increase the effectiveness and decrease the burdens of the agency's regulatory program. DOE's plan and its subsequent update reports can be accessed at <http://energy.gov/gc/services/open-government/restrospective-regulatory-review>.

The Department is committed to maintaining a consistent culture of retrospective review and analysis. DOE will continually engage in review of its rules to determine whether there are burdens on the public that can be avoided by amending or rescinding existing requirements. To that end, DOE is publishing this RFI to again explicitly solicit public input. In addition, DOE is always open to receiving information about the impact of its regulations. To facilitate both this RFI and the ongoing submission of comments, interested parties can identify regulations that may be in need of review at the following White House website:

<http://www.whitehouse.gov/engage>. DOE has also created a link on the Web page of DOE's Office of the General Counsel to an e-mail in-box for the submission of comments, Regulatory.Review@hq.doe.gov.

While the Department promulgates rules in accordance with the law and to the best of its analytic capability, it is difficult to be certain of the consequences of a rule, including its costs and benefits, until it has been tested. Because knowledge about the full effects of a rule is widely dispersed in society, members of the public are likely to have useful information and perspectives on the benefits and burdens of existing requirements and how regulatory obligations may be updated, streamlined, revised, or repealed to better achieve regulatory objectives, while minimizing regulatory burdens. Interested parties may also be well-positioned to identify those rules that are most in need of review and, thus, assist the Department in prioritizing and properly tailoring its retrospective review process. In short, engaging the public in an open, transparent process is a crucial step in DOE's review of its existing regulations.

The Department's dedication to involve the public in the regulatory process includes a number of ongoing successful public engagement efforts. These efforts include seeking public input on the retrospective review process, posting comments on our webpage to encourage the public to share their thoughts on the comments of others, and considering input received through a dedicated retrospective review email address. These efforts encourage public engagement in the retrospective review process, and provide the ability for the public to comment and engage in a dialog on the improvement of DOE regulations.

The Department has developed another innovative way to engage the public in the regulatory review process. The Department has tasked the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) to assist DOE in the retrospective review process. ASRAC was created as an advisory committee to provide advice and recommendations on the development of standards and test procedures for residential appliances and commercial equipment, certification

and enforcement of standards, and product labeling. ASRAC is comprised of representatives from industry, utilities, energy efficiency/environmental advocacy groups, and consumer groups. As a part of the retrospective regulatory review process, the Department has tasked ASRAC to identify particular rules for which revision would have the most positive impact and potential improvement to the regulatory process. ASRAC meetings are also open to the public and notice of ASRAC meetings are published in the *Federal Register*. ASRAC has also been tasked with writing a report that details their recommendations for the regulatory review process. ASRAC held two meetings at which retrospective regulatory review was on the agenda. Involving ASRAC in the regulatory review process will provide the public with another means to help the Department determine the regulations that could benefit the most from retrospective review.

Department of Energy Retrospective Review Successes

The Department highlights the examples below as retrospective review successes resulting from public engagement in the regulatory process. For further details and additional examples, the public is invited to review DOE's previous update reports, available at <http://www.energy.gov/gc/services/open-government/restrospective-regulatory-review>. New retrospective successes from DOE's March 2016 and July 2015 reports are described below.

- 1) DOE published a proposed rule to amend its regulations for the timely coordination of Federal Authorizations for proposed interstate electric transmission facilities pursuant to section 216(h) of the Federal Power Act. This rulemaking will improve the pre-application procedures and result in more efficient processing of applications. The proposed rule implements a number of Presidential directives, including the Presidential Memorandum on "Speeding Infrastructure Development through More Efficient and

Effective Permitting and Environmental Review" (August 31, 2011), Executive Order 13604, "Improving Performance of Federal Permitting and Review of Infrastructure Projects" (March 22, 2012), the Presidential Memorandum on "Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures " (May 17, 2013, and the Presidential Memorandum on "Transforming our Nation's Electric Grid Through Improved Siting, Permitting, and Review" (June 7, 2013).

- 2) DOE published a final rule amending the administrative requirements for grants and cooperative agreements with for-profit organizations. Specifically, the rule modifies title provisions and requirements related to the handling of real property and equipment acquired with federal funds. The rule also adds provisions related to export control requirements and supporting U.S. manufacturing, reporting on utilization of subject inventions, novation of financial assistance agreements, and changes of control of recipients. The rule will reduce the burden on grant recipients because they will need to file only UCC-1s and will not have to negotiate a separate "priority" term in their individual grant agreements. As part of its retrospective review efforts, DOE will continue to consider input from affected parties on ways to reduce burdens on its grant recipients and entities with which DOE enters cooperative agreements.
- 3) DOE issued a comprehensive update of regulations in 10 CFR part 810 concerning Assistance to Foreign Atomic Energy Activities, making the regulations consistent with current global civil nuclear trade practices and nonproliferation norms. DOE has also initiated a process improvement program to reduce the public burden associated with

nuclear technology export authorizations, to reduce specific authorization processing time, and to create a guide to part 810 and an electronic application and tracking (e-810) system. Since the Part 810 final rule went into effect on March 25, 2015, DOE has created guidance and FAQs, which are available online. As a result of the rule revisions, DOE estimates a net benefit, for the period 2013-2030, of \$19,896,142 per year at a 7-percent discount rate and \$19,253,076 per year at a 3-percent discount rate. The process improvement program is expected to reduce the time needed for DOE to process nuclear export authorizations and provide more transparency to submitters regarding process steps and the associated time needed to complete each step.

List of Questions for Commenters

The following list of questions is intended to assist in the formulation of comments and not to restrict the issues that may be addressed. In addressing these questions or others, DOE requests that commenters identify with specificity the regulation or reporting requirement at issue, providing legal citation where available. The Department also requests that the submitter provide, in as much detail as possible, an explanation why a regulation or reporting requirement should be modified, streamlined, expanded, or repealed, as well as specific suggestions of ways the Department can better achieve its regulatory objectives.

- (1) How can the Department best promote meaningful periodic reviews of its existing rules and how can it best identify those rules that might be modified, streamlined, expanded, or repealed?

(2) What factors should the agency consider in selecting and prioritizing rules and reporting requirements for review?

(3) Are there regulations that are or have become unnecessary, ineffective, or ill advised and, if so, what are they? Are there rules that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?

(4) Are there rules or reporting requirements that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?

(5) Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?

(6) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?

(7) Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?

- (8) Are there rules or reporting requirements that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory or reporting requirements?
- (9) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department can use to evaluate the post-promulgation effects of regulations over time? We invite interested parties to provide data that may be in their possession that documents the costs, burdens, and benefits of existing requirements.
- (10) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other DOE regulatory programs?

The Department notes that this RFI is issued solely for information and program-planning purposes. Responses to this RFI do not bind DOE to any further actions related to the response. All submissions will be made publically available on <http://www.regulations.gov>.

Issued in Washington, DC on May 3, 2016.

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